

IN THE MATTER OF	:	BEFORE THE
ANIMAL MEDICAL HOSPITAL AT	:	HOWARD COUNTY
GLENWOOD, INC.	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 06-007C

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DECISION AND ORDER

On April 24, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Animal Medical Hospital of Glenwood, Inc., Petitioner, for conditional uses for an animal hospital and a dog kennel and pet grooming establishment in an RR-DEO (Rural Residential – Density Exchange Option) Zoning District, filed pursuant to Sections 131.N.4 and 131.N.30 of the Howard County Zoning Regulations (the “Zoning Regulations”).

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

William E. Erskine, Esquire, represented the Petitioner. David Mister, Esquire, represented those in opposition to the petition. Dr. Stuart Scheinberg, Charles J. Crovo, Sr., John Chalk, Margaret Schultz, Holly Farnella, Barbara Sullivan, and Bill Walk testified in support of the petition. Robert Beaver, Brian Walsh, David Rifkin, and Georgea Moore testified in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The Petitioner is the contract purchaser of the subject property, known as 2525 Maryland Route 97, which is located in the 4th Election District at the southeast corner of Maryland Route 97 and McKendree Road in Glenwood (the “Property”). The Property is referenced on Tax Map 14, Grid 11 as part of Lot 3 of Parcel 217.¹

2. The Property is a rectangular-shaped parcel consisting of about 5.00 acres. The Property has about 500 feet of frontage on Maryland Route 97 and 460 feet of frontage on McKendree Road. The Property is currently improved with a single-family dwelling and accessory building, both of which will be removed. The bulk of the lot is open lawn. The Property slopes down about 15 feet from the northwest corner to the east side lot line.

3. Vicinal properties to the south and east are also zoned RR-DEO. Lot 1 of Parcel 217 is an 11.06-acre parcel immediately adjacent to the south side of the Property which contains a single-family detached dwelling and a large barn. Further south is the Glenwood Springs subdivision of single-family homes. To the east is the 6.64-acre remainder of Lot 3.

To the north across McKendree Road at the intersection of Route 97 is the B-1 zoned Inwood Village Center of retail stores. To the east of the shopping center is a wooded preservation parcel. East of this lot and northeast of the Property is the McKendree Estates subdivision of single-family homes.

West of the Property across Route 97 is Parcel 15, a 20-acre parcel owned by the Howard County Board of Education parcel being developed for the Bushy Park Elementary School. To the northwest of the Property is the B-2 zoned Glenwood Station shopping center.

4. The Petitioner proposes to establish on the Property an animal hospital for the medical treatment and physical rehabilitation of large, small and exotic animals, including on-site diagnostics, treatment and surgery; an equine medical treatment and surgical hospital; animal boarding and grooming services; pet education services; a pet adoption center; and retail sales of pet supplies. These services will be provided within a 12,900 square foot animal hospital and kennel facility to be constructed in the southwest portion of the site about 106 feet from the south lot line, 108 feet from the Route 97 right-of-way, and about 240 feet from the McKendree Road right-of-way. The facility will include 40 indoor dog kennels, large and small animal examination and surgical rooms, a treatment area, a laboratory, a pharmacy, a storage area, dog and cat waiting areas, canine and feline wards, three horse stalls, recovery areas, grooming and exercise areas, a kitchen, laundry, retail area, and a 1,500 square foot second-story business office.²

In addition to the hospital building, the Petitioner proposes to construct a 1,200 square foot barn in the southeast area of the site about 130 feet from the south lot line and 90 feet from the east lot line. A 90' by 60' oval open air exercise ring will be installed southeast of the barn.

¹ The Property is currently part of the larger Lot 3. The Petitioner proposes to create the Property by subdividing it from Lot 3.

² This second story office was added as part of an amendment offered by the Petitioner at the hearing. See Exhibit 1.

These facilities will be accessed from a 30' wide paved driveway beginning about 150 feet west of the northeast corner of the Property and extending south to a paved parking area for 38 vehicles to be located to the east of the building.³ At the southern end of the parking area will be a paved trailer turnaround and parking area situated 32 feet from the south lot line. A stormwater management area will be located near the west perimeter of the Property. An existing sewage disposal area is depicted in the northwest portion of the site. A dumpster area is depicted at the south end of the hospital building.

The Petitioner proposes to install Type "B" landscaping along the McKendree Road and Route 97 frontages, and Type "C" landscaping along the southern and eastern boundaries (except for the stormwater management area which will be landscaped in accordance with State and County requirements). Lighting for the parking area will use full cut-off lights shielded and directed downward. All exterior lights will be located at least 25 feet from any adjacent residential district.

5. The facility will be in operation from 7:30 a.m. to 8:00 p.m. on Mondays through Fridays, and from 7:30 am to 3:00 pm on Saturdays. In addition, emergency services will be provided 24 hours, seven days a week. The Petitioner anticipates that there may be 5-6 emergency care visits per week.

The facility will employ 10-12 full-time employees and 10-12 part-time employees. No more than 12 employees will be on site at any one time. The proposed equine hospital will provide intensive care services, laser surgery, in-house radiography, endoscopy, laboratory diagnostics and reproductive services. The small animal hospital will provide state of the art diagnostics, including ultrasound, digital x-ray, endoscopy

³ The Petitioner amended its petition at the hearing to increase the number of parking spaces from

and laser surgery. The kennel area will be designed with soundproofing technologies such as acoustical tiles and soundproofing baffles. Animal waste materials will be disposed of off site.

Traffic to and from the Property will consist of passenger vehicles, horse trailers and small trucks, and occasional delivery trucks and waste management trucks.

No outdoor kennels or runs are proposed. The Petitioner proposes to use the outdoor area north of the building to exercise dogs under leash and to diagnose animals.

5. The 2000 General Plan designates the Property as a "Rural Residential" land use. The Property will be served by private water and septic facilities. McKendree Road Florence Road is a minor collector roadway with two travel lanes and a variable pavement width within a proposed 80-foot wide right-of-way. The speed limit in the area of the Property is 30 mph. Visibility from the proposed entrance road is over 400 feet in each direction.

6. The petition indicates that there are no similar equine hospitals in the area; the closest equine hospital offering the full array of services proposed by the Petitioner is located in Leesburg, Virginia, about 95 miles away. The Petitioner currently operates a smaller 2,800 square-foot facility located in the Inwood shopping center across McKendree Road. Dr. Stuart Scheinberg, a principal of the Petitioner, testified that the current practice has about 7 dog runs and 20-25 cages; the proposed facility will have 50 dog runs and 30-40 animal cages. Each dog run will be 3' by 6' or 8' in dimension. About 1/3 of the facility will be dedicated to animal housing.

Dr. Scheinberg testified that outdoor animal waste will be picked up and held in the enclosed dumpster, which will be emptied weekly. The dumpster will be fenced and screened by landscaping and will not emit odors discernible at property lines. He further stated that the area north of the hospital building will be used as an outdoor exercise area for dogs. He stated that each dog will be exercised twice a day for approximately 5 minutes and that no more than 2-3 will be exercised at one time. Dogs taken outdoors will be kept on leashes.

Dr. Scheinberg testified that the Health Department has indicated that the septic field must be located where indicated on the plan. He estimated that the dwelling on Lot 1 to the south is about 800-900 feet from the proposed building site.

In response to questioning, Dr. Scheinberg testified that the facility will be able to house 80-85 small animals (of which about 70% will be dogs) and three horses within the hospital building and additionally 8-10 horses in the barn.

7. Charles J. Crovo, Sr., the project engineer, testified that deceleration and acceleration lanes will be provided along McKendree Road at the site's entrance. He stated that the Petitioner agrees to increase the south lot line landscape buffer to Type "D" landscaping.

8. John Chalk, the project architect, testified that the hospital building will be designed to resemble a Kentucky horse farm. The center peak of the building will be 28 feet tall. The building will be constructed with concrete block faced with hardiplank (cement) boards. The north kennel side of the building will be constructed with a double block wall of sound absorbent acoustic blocks. He stated that virtually no sound will emanate from the building at all.

9. Ms. Schultz and Ms. Fernell testified that there is a great need for an equine hospital in the area.

10. Robert Beaver testified that he lives on Lot 30 in the Glenwood Springs subdivision south of the Property. He stated that he is concerned about the size and scope of the proposed use, as it will be five times the size of the Petitioner's existing facility and will provide expanded services. He stated that given the number of animals to be housed the facility will cause inordinate noise and smell. He stated that the intersection of Route 97 and McKendree Road has increased in congestion in recent years and, with the addition of a new school, will become more dangerous.

11. Brian Walsh testified that he lives on Lot 32 in the Glenwood subdivision. He stated that the lights at the Inwood shopping center penetrates the trees and shines into his house, even in the summer.

12. David Rifkin testified that he lives on Lot 1 of the McKendree Estates subdivision. He estimated that his property is about 400 yards away from the proposed outdoor exercise area. He stated that, given that up to 55 dogs may be housed at the facility at any one time, the resulting 110 dog-walking sessions will cause an inordinate amount of noise. He also expressed his concern that the additional trips generated by this site (up to 85 animals per day and 12-24 employees) will exacerbate an already dangerous intersection at Route 97 and McKendree Road.

13. Georgea Moore testified that the new school and park will add more turning movements to the intersection. The traffic currently backs up at the intersection during peak hours and at mid-day.

14. The Petitioner stated that dogs can be walked to the west of the building instead of the north side in order to reduce the noise for residents of McKendree Estates.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B).

A. General Plan. The Howard County General Plan designates the area in which the Property is located as a “Rural Residential” land use. Chapter 3 of the General Plan, which relates to the preservation of the rural west, identifies the intersection of Route 97 and McKendree Road as a “commercial crossroads” to which commercial expansion and redevelopment efforts should be directed. Policy 3.10 states in pertinent part:

Locate non-residential development in and around existing Rural West centers. *Limit such development to a scale appropriate to serve the local needs of the surrounding community rather than the interstate traveler* (italics added).

The Petitioner points to the first sentence of this policy as support for its contention that the proposed animal hospital/dog kennel/pet grooming, training, adoption and retail establishment is in harmony with the General Plan’s goal of concentrating commercial development in rural areas at existing crossroads. The Petitioner’s argument, however, ignores the second sentence of the policy, which limits the scale of such commercial development to a strictly local dimension. The purpose of this limitation is, at least in part, to mitigate against an increase in traffic congestion on nearby through traffic roads like Route 97 which the Plan itself recognizes has become more severe during peak hours due to strong regional through traffic (pg. 54).

While it is generally true that animal hospitals and dog kennels are commonly found in rural areas and are presumptively considered compatible with residential land uses, this presumption applies only to the typical rural facility. By its own evidence, the Petitioner established that the proposed facility is far from typical – indeed, it will be the only one of its kind in the State. The facility will provide a wide variety of equine, small animal, large animal, and exotic animal medical, surgical, grooming, training, adoption, and retail services not found this side of Leesburg, Virginia. The proposed medical services will be “state-of-the-art” and can accommodate an unusually large number of animals at one time. Presently, horse and animal owners travel out of the County and out of the State to obtain the type and breadth of services to be offered by the Petitioner.

It is therefore reasonable to anticipate that horse and animal owners from outside the County and outside the State will likely travel to the Property to obtain the Petitioner’s sophisticated and multifarious services. The proposed facility, unlike the typical rural animal hospital or dog kennel, will not be limited to a local clientele, but will attract patrons from around and outside of the State. These patrons will travel the already heavily congested Route 97 and exacerbate the problem that the General Plan intends to guard against.

Consequently, I find that the nature and intensity of the use and the location of the Property with respect to streets giving access to the Property are such that the use will not be in harmony with the land uses and policies indicated in the General Plan for the district - specifically, Policy 3.10 – contrary to Section 131.B.1.a.

In addition, the proposed facility combines two conditional uses of relatively high intensity on a relatively small parcel of 5.0 acres. My review of past animal hospital and

dog kennel conditional uses⁴ approved by the Board of Appeals since 1978 indicates that, by comparison, the overall scale and intensity of the proposed facility is far greater than the County Council anticipated when it enacted the General Plan.⁵ Of the 17 cases approved since 1978, only one combined both an animal hospital and a dog kennel (see BA Case No. 86-42E). That use allowed up to 250 animals on site, but was expressly limited to small animals only. What's more, the use was established on a lot of over 22 acres, more than four times the size of the subject Property.

A perusal of the other approved dog kennel cases reveals that, of the three located on smaller lots like the subject Property (5-6 acres), all were limited to 10-15 animals. In several cases, kennels located on larger lots were also expressly limited to a relatively small number of animals (e.g., BA Case No. 931-C: 16 dogs on 14 acres; BA 98-50E: 12 dogs on 10.48 acres; BA 00-21: 20 dogs on 21.13 acres). In three cases, over 85 animals are permitted on site at one time; however, these cases involve larger lots and small animals only (BA 82-43E: 85 animals on 18.45 acres; BA 92-42E&V: 100 animals on 18.45 acres; BA 94-19E: 194 animals on 25.58 acres).

With respect to animal hospitals, while in three cases the hospitals were located on smaller parcels (1-6 acres), these involved small operations with few employees. In the only case involving an equine hospital, the site is 20.1 acres and the use is limited to six horses at a time (BA Case No. 02-37C&V).

The County Council was presumptively aware of most of these cases when it enacted the General Plan. Moreover, the Council itself expressed its intentions with

⁴ Prior to 2001, conditional uses were termed "special exceptions."

⁵ I take notice of the following Board of Appeals Decision and Orders: 02-37C&V, 00-22E, 05-033C, 05-010C, 00-22E, 98-50E, 95-72E, 94-19E, 92-42E&V, 90-14E&V, 88-55E, 87-20E, 86-42E, 85-51E, 83-17E, 83-03E, 82-43E, 931-C, and 920-C.

respect to the size and scale of dog kennels in two legislative acts. In Section 103.A.82 of the Zoning Regulations, “kennels” are defined to include “any lot smaller than 20 acres where six or more dogs, not including dogs under six months of age, are kept for any purpose.” In Section 131.N.30, the minimum lot size for a kennel of less than 10 dogs is set at 3 acres; the minimum lot size for a kennel with 11 or more dogs is established at 5 acres. From these enactments, one may glean a legislative intent to limit the intensity of a dog kennel use by requiring larger lots, and thus more space for buffering and setbacks, for facilities housing a large number of animals.

In this case, the Petitioner proposes to house approximately 90-100 animals, including 11-13 horses, on a lot that is the bare minimum of five acres. In addition, the use will include a large and small animal hospital, grooming, training, adoption and retail services, a separate horse barn, and a horse exercise ring. The facility will include a horse trailer parking and turnaround area and 38 parking spaces. This combination of uses on a minimum-sized lot results in an intensity of use that has never been approved by the Board of Appeals and was not anticipated by the County’s General Plan.

In 2003, I rejected an application for a dog kennel of up to 40 dogs on a 5.92 acre lot (see BA Case No. 00-22E). In that case, the petitioner proposed to combine the dog kennel with an active farm operation involving 150 animals. I found that the size of the lot did not provide a sufficient setback and buffer given the intensity of the existing and proposed uses. Noting that the minimum lot size for a kennel housing only 11 dogs is five acres, the decision states: “A kennel housing 40 dogs should require a much larger lot with ample setbacks.” BA Case No. 00-22E, pg. 6. The same can be said of the present proposal.

The Petitioner argues that its proposal does not include outdoor kennels or runs and therefore will be of lesser impact than facilities with them. The Petitioner's evidence indicates, however, that dogs will be regularly and constantly exercised and sometimes diagnosed out of doors. As the Board of Appeals found in BA Case No. 920-C (see Decision and Order dated April 24, 1997), for the purposes of a special exception/conditional use, it is the outdoor animal activity, and not the form of structure or enclosure, that is significant. "To allow outdoor animal activity on the subject property would alter the intensity of the use and its impact on vicinal properties." BA Case No. 920-C, pg 5. In this case, the regular and constant exercising and treatment of dogs in an unrestricted open area has no less impact than if the Petitioner had proposed outdoor pens or runs.

Consequently, I find that the petition is not in harmony with the General Plan because the overall intensity and scale of uses on the site is not appropriate given the inadequacy of the size of the lot and the resulting buffers and setbacks provided. The petition therefore fails to comply with Section 131.B.1.b.

B. Adverse Effect: Section 131.B.2 of the Zoning Regulations requires me to determine whether the proposed use at the Property will have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses. Virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed animal hospital/kennel has adverse effects in the RR zone. The proper question is whether those adverse effects are

greater at the proposed site than they would be generally elsewhere within the RR district.

For the reasons stated below, I find that the Petitioner has not met its burden to present sufficient evidence establishing that this proposed use will not have adverse effects on vicinal properties above and beyond those ordinarily associated with an animal hospital and kennel in the RR district:

1. Physical Conditions. The Petitioner's proposed animal hospital and dog kennel will consist of activities that are both typical and not typically associated with these uses, including a wide variety of equine, small animal, large animal, and exotic animal medical, surgical, grooming, training, adoption and retail services. The proposed uses will be of relatively high intensity, given that it will involve housing approximately 90-100 animals on a five-acre lot. While the animals will be kept indoors most of the time, dogs will be exercised outdoors on a regular and constant basis in open areas either to the north or west of the proposed building. If the dogs are walked more than 40 feet to the north of the building, they will be less than 200 feet from the north lot line; if they are walked to the west, they will be less than 108 feet from the west lot line – in both cases, they would be less than the minimum distance from lot lines for an outdoor kennel or run (see Section II.1 below). These inadequate setbacks will result in an inordinate level of noise for vicinal properties.

In addition, the variety and volume of services to be provided by the Petitioner is greater than any other previously approved facility. With up to 12 employees on site at all times and room for up to 38 vehicles and several horse trailers, the level of activity on site – e.g., vehicles arriving and departing, large and small animals loading and unloading

from vehicles – will be unusually high as compared to a typical animal hospital or kennel. What's more, this activity will take place at least 12½ hours a day on weekdays, 7½ hours on Saturdays and, in emergency cases, at any hour of the day or night. Given the minimal size of the site and relatively small setbacks, the potential for noise and odors resulting from this high level of activity is greater than that ordinarily associated with an animal hospital or kennel. I therefore find that the uses will generate adverse effect such as excessive noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions beyond those inherently associated with an animal hospital and dog kennel in the RR zoning district, contrary to Section 131.B.2.a.

2. Structures and Landscaping. The proposed 12,900 square foot animal hospital and kennel facility is larger than any other similar structure in Howard County. It will be situated in the southwest portion of the site about 106 feet from the south lot line, and therefore is less than the minimum setback required by Section 131.N.30.a(3)(b). Although the Petitioner proposes to install Type “B” landscaping along the north and west road frontages and Type “D” landscaping along the south lot line to screen the building from the adjoining residential property, I find that it is not sufficient to mitigate the adverse effects of an inordinately large building that will be situated unusually close to roadways and residential properties.

Similarly, the proposed 1,200 square-foot barn in the southeast area of the site will be only about 130 feet from the south lot line and 90 feet from the east lot line, and therefore does not comply with the minimum structure setback provisions. Although the Petitioner proposes to install Type “C” landscaping along the east lot line to screen the building from the adjoining residentially zoned property, I find that it is not sufficient to

mitigate the adverse effects of an inordinately large building that will be situated unusually close to residential properties.

Consequently, I find that the location, nature, and height of structures, walls and fences, and the nature and extent of landscaping on the site are such that the use will hinder or discourage the use or development of the adjacent land and structures more at the subject site than it would generally elsewhere in the zone, in contravention of Section 131.B.2.b of the Zoning Regulations.

3. Parking and Drives. The Petitioner will provide 38 parking spaces to the rear of the building and a trailer parking and turnaround area at the south end of the parking lot. The DPZ report indicates that there are no specific minimum parking requirements for animal hospitals or kennel uses in the Zoning Regulations, but notes that an office use would require at least 3.3 spaces for each 1,000 square feet of floor area. I note that a medical office would require 5.0 spaces per 1,000 square feet, and a personal service establishment must have 3.3 spaces per 1,000 square feet. Even using the lower standard, the Petitioner's proposed 12,900 square foot building would require at least 43 parking spaces; consequently, the parking area is not of adequate size for the proposed use.

Also, the trailer parking area at the south end of the parking lot is located only 32 feet from the adjacent residential property to the south. Given the large size of vehicles using this area and the activity and noise associated with the loading and unloading of horses and other large animals, the proposed setback from the south lot line is inadequate. Consequently, I find that the parking areas are not of adequate size and parking areas and driveways are not properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties as required by Section 131.B.2.c.

4. Safe Access. The access drive from McKendree Road is properly located and has adequate sight distance in both directions. Deceleration and acceleration lanes will be provided along McKendree Road at the site's entrance. Consequently, the ingress and egress drive will provide safe access with adequate sight distance and with adequate acceleration and deceleration lanes where appropriate, as required by Section 131.B.2.d.

II. Specific Criteria for Kennels and Pet Grooming Establishments (Section 131.N.30).

1. Section 130.N.30.a provides:

For kennels housing or training eleven or more animals at one time, the following requirements shall apply:

(1) Minimum lot size..... 5 acres

The Property is 5.00 acres in area, and therefore meets this requirement.

(2) Minimum setback for outside pens and runs from any lot line200 feet

The petition states that it does not propose any outside pens or runs; however, the Petitioner proposes to use either the area north of the building or west of the building as an "outdoor exercise area" in which dogs will be walked and diagnosed. As explained above, the Board of Appeals has determined that such outdoor activity is tantamount to providing a pen or run; indeed, because the areas' boundaries are not defined, the adverse effect could be greater than a delineated pen or run. If the dogs are walked more than 40 feet to the north of the building, they will be less than 200 feet from the north lot line; if they are walked at all to the west, they will be less than 108 feet from the west lot line – in both cases, they would be less than the minimum distance from lot lines for an outdoor pen or run. Consequently, I find that the petition fails to meet the minimum setback required under this provision.

*(3) Minimum structure setback**(a) From public street right-of-way100 feet*

The hospital building is 108 feet from Route 97 and 240 feet from McKendree Road - more than the minimum required.

(b) From any other lot line200 feet

The hospital building is 106 feet from the south lot line and therefore does not meet the minimum setback required by this provision. In addition, the proposed barn in the southeast area of the site will be about 130 feet from the south lot line and 90 feet from the east lot line, and therefore does not comply with this provision.

(4) The Hearing Authority may reduce the 200 foot setback from lot lines for structures and outside pens or runs to a distance no less than 100 feet if it finds that the setback reduction will not adversely affect neighboring properties due to visual impact, noise, dust, odors or other causes, and that the pen, run or structure will be located at least 200 feet from existing dwellings on different lots. Outside pens and runs for which this setback reduction is approved shall be enclosed by solid fences or walls.

The Petitioner has requested a reduction in the structure setback for the hospital building from 200 feet to 106 feet from the south lot line. For the reasons stated in Section I.B.2 above, I find that the setback reduction will adversely affect vicinal properties and is therefore denied.⁶

⁶ The Petitioner did not request a reduction in the setback for the outdoor exercise area(s). This request would have been likewise denied for the reasons stated in Section I.B.1; in addition, the Petitioner failed to propose to enclose the areas by solid fences or walls. Also, the Petitioner did not request a structure setback reduction for the barn; this request would have similarly been denied because the barn is less than 100 feet from the east lot line.

2. Section 131.N.30.b applies to pet grooming establishments not located completely within an residence, or for kennels housing or training no more than ten animals at one time, and therefore does not apply to this petition.

3. Section 130.N.30.c concerns grooming establishments in which all business activities take place within a residence, and is therefore inapplicable.

4. While the Petitioner proposes to provide perimeter landscaping for the Property, given the small size of the lot and the high intensity of the proposed use relative to other animal hospital and dog kennel uses, the proposed parking areas, outside exercise areas, and buildings will not be suitably screened from adjoining properties and public street public street rights-of-ways as required by Section 130.N.30.d.

5. Dr. Scheinberg testified that outdoor animal waste will be picked up and held in the enclosed dumpster, which will be emptied weekly. The dumpster will be fenced and screened by landscaping and will not emit odors discernible at property lines. Consequently, I find that the disposal of wastes will be such that odors or other emissions will not be perceptible at lot lines, in compliance with Section 130.N.30.e.

6. The Property has frontage on and direct access to McKendree Road, a minor collector, in compliance with Section 130.N.30.f.

III. Specific Criteria for Animal Hospitals (Section 131.N.4).

1. Section 131.N.4a(1) requires that outside pens or runs must be at least 200 feet from any lot line and screened from roads and residential properties. As stated above, I find that, for the purposes of a conditional use, the Petitioner's proposed outdoor exercise area(s) are tantamount to providing outside pens or runs. If the dogs are walked more than 40 feet to the north of the building, they will be less than 200 feet from the north lot

line; if they are walked at all to the west, they will be less than 108 feet from the west lot line – in both cases, they would be less than the minimum distance from lot lines for an outdoor pen or run. Consequently, I find that the petition fails to meet the minimum setback required under this provision.⁷

2. John Chalk, the project architect, testified that the building will be constructed with concrete block faced with hardiplank (cement) boards. The north kennel side of the building will be constructed with a double block wall of sound absorbent acoustic blocks. He stated that virtually no sound will emanate from the building at all. Consequently, I find that the petition complies with Section 131.N.4.b.

3. For the reasons stated in Section II.5, the petition complies with Section 131.N.4.c.

⁷ There is no setback reduction provision for animal hospitals.

ORDER

Based upon the foregoing, it is this **8th day of June 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Animal Medical Hospital of Glenwood, Inc., for conditional uses for an animal hospital and a dog kennel and pet grooming establishment in an RR-DEO (Rural Residential – Density Exchange Option) Zoning District is hereby **DENIED**.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Thomas P. Carbo

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.